**Arb. Case No.32 of 2007**

6.11.2007 Present: Mr. J.S. Bhogal, Sr. Advocate with Mr. Suneet Goel, Advocate, for the petitioner.

Mr. Shrawan Dogra, Advocate for the respondents.

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The petitioner has filed this application under Section 9 of the Arbitration and Conciliation Act 1996 ( for short 'Act'), restraining the respondents during the pendency of the arbitration proceedings from enforcing the Bank Guarantees furnished by the petitioner as detailed in para-7 of the petition.

The facts in brief are that respondents had placed some purchase orders to the petitioner for supplying cables. The materials were dispatched to the various consignees as per the purchase orders, such materials were received in the stores of the respective consignees and entered in the measurement books except for the quantities which had been received in the stores of the respondents after the respondents chose to illegally cancel the order.

The petitioner was surprised to receive some complaints from some Assistant Engineers regarding defects in the materials supplied. The petitioner replaced said materials on 20.2.2005. Some other consignees alleged supply of defective materials which were also replaced by the petitioner. The petitioner requested the authorities to intimate about the test reports of the alleged defective materials. The respondents, however, failed to provide any information and on 18.8.2005 respondent No.2 cancelled the order for the balance materials.

The respondents are arbitrarily requiring the petitioner to replace the materials lying in the stores of the respondents. The respondents are threatening to enforce the following bank guarantees:-

| BG No. | Amount | Furnished for | Valid upto |
|---|---|---|---|
| 01/05 | Rs.4,34,501 | Performance guarantee Main purchase order | 02.07.2008 |
| 49/05 | Rs.1,08,000 | Performance guarantee Additional purchase order | 28.02.2008 |
| 02/05 | Rs.1,58,501 | Performance guarantee PO No.14/2004 | 02.07.2008 |
| 14/05 | Rs.2,50,000 | Earnest money for Tender No.9/05 due on 28.2.05 | 28.02.2008 |
| Total | Rs.9,51,002 | | |

According to petitioner disputes between the parties are covered by arbitration agreement and are liable to be referred to Arbitration. The petitioner on 20.8.2007 through his counsel invoked arbitration clause and sought reference to arbitration. Thereafter the petitioner has filed this application under Section 9 of the Act. for interim directions.

The respondents have filed the reply and have taken preliminary objections that they have right to encash the bank guarantees as per contract, there is no enforceable cause of action in favour of the petitioner and no legal or vested rights of the petitioner have been infringed. On merits the case set up by the petitioner has been denied. The petitioner has filed rejoinder and reasserted his case.

Heard. On 3.9.2007 this Court ordered that respondents shall not revoke the bank guarantees mentioned in para-7 of the petition. This order was extended from time to time and last extension was ordered on 4.10.2007.

The learned counsel for the parties have submitted that Mr. H.M. Dharula Superintending Engineer, (Contract) HP SEB has been appointed Arbitrator to adjudicate the disputes between the parties. The Arbitrator has jurisdiction under Section 17 of the Act to pass interim order. In these circumstances, the order dated 3.9.2007 passed by this Court in this case and extended from time to time is further extended only upto 30.11.2007. The petitioner, if so, advised may file appropriate application in the arbitration proceedings before the Arbitrator for interim relief. The Arbitrator shall decide such application of the petitioner, if filed, in accordance with law and pass such order as he deems fit uninfluenced by any order passed by this Court in the above case. The parties shall be at liberty to raise all pleas before the Arbitrator which are available to them in law. The petition stands disposed of.

***( Kuldip Singh)***
***Judge***

***November 6, 2007***
***(sks)***